UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	**ORDER DENYING REQUEST FOR RECUSAL**
-against-	:	
SAMUEL NESS,	:	01 Cr. 699 (AKH)
Defendant.	:	

ALVIN K. HELLERSTEIN, U.S.D.J.:

On November 16, 2009, Samuel Ness moved pursuant to the Hyde Amendment, Pub. L. No. 105-119, § 617, 111 Stat. 2440, 2519 (1997), reprinted in 18 U.S.C. § 3006A, for fees, costs, and expenses of litigating his criminal case, arguing that the government's prosecution was "vexatious, frivolous, or in bad faith." Mr. Ness requested that I recuse myself from deciding the motion, stating that the record reveals that I have "at least given the appearance of prejudice in this matter." Pl.'s Mem. at 1. Because I do not feel I was biased or gave the appearance of bias, and Mr. Ness fails to support his allegation, I deny his request.

Mr. Ness points to three factors justifying recusal: (1) "the lengthy denial of bail pending remand from the Supreme Court—based uncritically on the adoption of 'reasons' proffered by the government, lacking in legal basis, and rejected roundly by the Second Circuit," (2) "failing to immediately enter a judgment of acquittal, instead seemingly inviting the government to continue proceedings," and (3) "'religious comments at sentencing."

Plaintiff provides no support for his proposed justifications, and the record belies them. My denial of bail pending remand was based on the analysis I set out in United States v. Ness, 01 Cr. 699 (AKH), 2008 WL 3842961 (S.D.N.Y. August 15, 2008). Rulings by a judge on the facts and laws do not show bias.

With regard to Mr. Ness's second argument, the time between the Second Circuit's reversal and my judgment of acquittal, intended to give the government the opportunity to

decide how to proceed, could hardly be criticized. Mr. Ness presents no facts or law suggesting that my decision not to enter the judgment immediately was improper or motivated by bias.

Finally, though Mr. Ness asserts that I made "religious comments" at sentencing, he points to no specific examples. Mr. Ness was found guilty by a jury and he was sentenced accordingly. Religion was not a factor.

Because Mr. Ness fails to show that there was even an appearance of bias or impropriety, I deny his request for recusal.

SO ORDERED.

Dated: November 25, 2009
New York, New York

ALVIN K. HELLERSTEIN
United States District Judge